Supreme Court, U.S.
FILED
09-662 DEC 2 - 2009
OFFICE OF THE CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED
STATES

CHHUN ENG,
PETITIONER,

VS.

ERIC H. HOLDER JR., ATTORNEY GENERAL
RESPONDENT.

ON PETITION FOR A WRIT OF
CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED FOR REVIEW

1. Whether the Cambodian Freedom Fighters ("CFF") is a terrorist organization and therefore Petitioner is statutorily barred from his application for asylum?

2. Whether Petitioner, a member of CFF, poses any danger of the security to the United States, which would make him ineligible for the relief in the form of asylum?

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record for Petitioner, in compliance with Rule 14(b) and rule 29.6 of the Rules of the Supreme Court of the United States, certifies the following listed person and parties have an interest in the outcome of this case:

1. US Court of Appeals for the Ninth Circuit, Respondent
2. Eric H. Holder, Jr., U.S. Attorney General, Respondent
3. Peter D. Keisler, Attorney for Respondent
4. Michael P. Lindemann, Attorney for Respondent
5. William C. Peachey, Attorney for Respondent
6. The Board of Immigration Appeals
7. Christine A. Bither, Immigration Judge in Los Angeles, CA
8. Cindy S. Chang, Attorney for Petitioner
9. Chhun Eng, Petitioner

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STATEMENT OF JURISDICTION

On September 11, 2009, the US Court of Appeals for the Ninth Circuit denied the Petitioner's petition for review. This Court's jurisdiction to grant the review on a writ of certiorari is discretional. US Supreme Court Rule 10. The judicial discretion is warranted here because the US Court of Appeals for the Ninth Circuit has entered a decision in conflict with its own decision on the same important matter. US Supreme Court Rule 10 (a).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

1. Immigration and Nationality Act (INA) section 237(a)(1)(B)
2. INA Section 22(a)(3)(B)(i)(V).
3. INA Sections 208(b)(2)(A)(iv)
4. INA section 208(b)(2)(A)(v)
5. INA Section 212(a)(3)(B)(iii)
6. INA section 212(a)(3)(B)(vi)(III)
7. INA Section 212(a)(3)(B)(vi)
8. INA Section 241(b)(3)(B).
9. INA sections 241(b)(3)(B)(iv),
10. INA Dec. 811, 814-15 (BIA 1988)
11. 8 USC Section 1182(a)(3)(B)(iii).
12. 8 USC Section 1182(a)(3)(B)(vi)

STATEMENT OF THE CASE

This is an immigration case. Petitioner, Chhun Eng (Petitioner), is a native and citizen of Cambodia who remained in the United States beyond the authorized period of his nonimmigrant visitor visa.

On December 17, 2002, Petitioner filed an asylum application with the Department of Homeland Security (DHS). The application was referred to the Immigration Court.

DHS issued a Notice to Appear (NTA), charging Petitioner removable under the Immigration and Nationality Act (INA) section 237(a)(1)(B), nonimmigrant overstay.

On April 24, 2005, Immigration Judge ("IJ"), in her oral decision, concluded that the Cambodian Freedom Fighters (CFF) is a terrorist organization as defined in INA section 212(a)(3)(B)(vi)(III) and therefore petitioner was ineligible for asylum, under INA section 208(b)(2)(A)(v).

Petitioner filed a timely appeal to the Board of Immigration Appeals ("BIA"). The BIA affirmed the decision of the IJ and dismissed his appeal on October 16, 2006. Thereafter, Petitioner filed a timely petition for review with the US Court of Appeals for the Ninth Circuit.

On June 2, 2009, Petitioner was offered an opportunity to present an oral argument in front of the three-panel justice. Unfortunately, the Ninth Circuit Court denied petitioner's petition for review by issuing a judgment on September 11, 2009.

ARGUMENT

A. CFF is not a terrorist organization because it was incorporated and registered as a political organization in California and the US Department of State did not list it as a terrorist group

The Congress passed the USA PATRIOT Act of 2001 after the September 11, 2001 attacks. An applicant is barred from asylum and withholding of removal if he or she is found to have engaged in, is likely to engage in, or incited terrorist activity. INA Sections 208(b)(2)(A)(v) and 241(b)(3)(B). A "terrorist organization: could be one designated by the Secretary of State or could be "a group of two or more individuals, whether organized or not, which engaged in terrorist activity." INA Section 212(a)(3)(B)(vi), 8 USC Section 1182(a)(3)(B)(vi). "Terrorist activity", as defined by the INA and expanded under the USA PATRIOT Act, includes: hijacking, sabotage, hostage taking, assassination, use of biological, chemical, or nuclear weapons, and use of explosives, firearms, or other weapon or dangerous device, and the threat, attempt, or conspiracy to do any of these activities. INA Section 212(a)(3)(B)(iii), 8 USC Section 1182(a)(3)(B)(iii).

CFF is not a terrorist organization not only because the State of California recognizes it as a political organization, but also the Department of State did not list it as a terrorist group. Therefore, Petitioner should not be statutorily barred from his application for asylum.

CFF is an anti-Communist and paramilitary organization that was established in October 21, 1989, by its founder Yasith Chhun at Poi pet near the Cambodian-Thai border. Please refer to Wikipedia at http://en.wikipedia.org/wiki/Cambodian_Freedom_Fighters.

In June 1999, CFF was incorporated and registered at the California Secretary of State's office as a political organization. Its headquarters is in Long Beach, California. Its goal is "to fight against communists to protect the interests of Cambodian people." Cambodia people should have the freedom to voice their belief in that to choose how and who should control their government, CFF's activities are all internally inside the Cambodia for the purpose that they believe is for the best interest of their people. There is no report regarding CFF caused any other country or people's harm as the real terrorist group has done. CFF should not be considered as a terrorist organization.

Further, CFF is not a terrorist organization because even the United States Department of State's annual report on "Pattern of Global Terrorism – 2003" DID NOT list CFF as a terrorist organization. As of today, the Secretary of the State has never designated CFF as a terrorist group.

B. Petitioner was just a member of CFF and he does not pose any danger to the security of the United States. Therefore, he should be eligible for the relief in the form of asylum

Petitioner was a member of CFF. He believed that CFF's goal was to free his country

from the Communist. His involvement with the group was limited to raising money and recruiting people. Petitioner never participated in any violent act, if any, during the short-lived CFF movement.

Despite the expansion of bars to asylum on terrorism grounds, being a member of a terrorist group is not a per se bar to asylum. INA Section 22(a)(3)(B)(i)(V). BIA has held that "mere membership in an organization is not sufficient to bar one from relief, ---- It is the objective effect of the individual's actions which is controlling." Matter of Rodriguez-Majano, 19 INA Dec. 811, 814-15 (BIA 1988)

Further, under INA Sections 208(b)(2)(A)(iv) and 241(b)(3)(B)(iv), an applicant is barred from receiving asylum if "there are reasonable grounds for regarding the applicant as a danger to the security to the security of the United States." Also see Ali v. Reno, 829 F.2d 1415, 1434 (S.D.N.Y. 1993), and Azzouka v. Meese, 820 F.2d 585 (2nd Cir. 1987).

Petitioner came to the United States in January 2002. He works hard to support his three children who are living with him in the United States. During these seven years in the United States, Petitioner has been a law-abiding person who filed his tax returns accordingly. Petitioner has never committed any illegal, nor violent, acts in the United States.

Even if the Court should consider CFF as a terrorist organization, in no way Petitioner would cause any danger to this country's

security. As a member of CFF, Petitioner's involvement with the organization was just to recruit people and raise money from those who longing for freedom, justice, and democracy.

From his own testimony, Petitioner believed that the CFF movement was a peaceful movement to topple the Cambodian government and get rid of communism. Petitioner believed that the CFF movement had nothing to do with taking the lives of others.

All the evidence presented shows that Petitioner is not a violent person. Petitioner's decision to join the CFF was for the freedom, justice, and democracy of Cambodia. Petitioner certainly does not pose any danger or threat to the security of the United States. Accordingly, Petitioner's application for asylum should not be statutorily barred.

CONCLUSION

Based on the foregoing reasons, Petitioner respectfully requests this Petition for a Writ of Certiorari be granted.

Dated: December 2, 2009

Respectfully Submitted,

By: /S/

Cindy S. Chang, Esq.
Attorney for Petitioner

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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED SEP 11 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ENG CHHUN, Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,
Respondent.

No. 06-75183
Agency Nos. A094-833-083

MEMORANDUM*

On Petition for Review of an Order of the Board of Immigration Appeals

Argued and Submitted June 2, 2009 Pasadena, California

Before: W. FLETCHER, CLIFTON and M. SMITH, Circuit Judges.

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*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

APPENDIX A

Eng Chhun petitions for review of the Board of Immigration Appeals' ("BIA") decision affirming the Immigration Judge's ("IJ") denial of his request for asylum and withholding of removal. We hold that the BIA's decision was supported by substantial evidence and deny the petition for review.

We review the BIA's decision determining whether an alien has established eligibility for asylum or withholding of removal for substantial evidence. *Malkandi v. Mukasey,* 544 F.3d 1029, 1035 (9th Cir. 2008). We have jurisdiction to review the BIA's denial of withholding of removal under 8 U.S.C. § 1252(a)(1). We reject the government's contention that we lack jurisdiction to review the BIA's denial ofChhun's asylum request. We have jurisdiction to review the BIA's denial of asylum under the REAL ID Act, § 1252(a)(2)(D), as this is a mixed question of law and fact. *See Khan v. Holder,* No. 07-72586 (9th Cir. Sept. 9, 2009).

The BIA held that the Cambodian Freedom Fighters ("CFF") is a terrorist organization as defined in § 1182(a)(3)(B)(vi)(III). This holding is supported by substantial evidence. Under §1182(a)(3)(B)(vi)(III), a terrorist organization is "a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv)." These "activities" include "commit[ting] ... under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity." *See* § 1182(a)(3)(B)(iv)(I). "[T]errorist activity ... means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the

United States, would be unlawful under the laws of the United States or any State) and which involves," among other things, "[t]he use of any ... explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain) ... with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property." § 1182(a)(3)(B)(iii)(V). The BIA relied on evidence in the record showing that the CFF had attempted to overthrow the Cambodian government through violent means, including attempting a coup in November 2000, during which the CFF attacked three military bases and caused the death of eight or nine people. This constitutes terrorist activity under the statute.

Chhun argues that these actions by the CFF cannot constitute "terrorist activity" because the CFF's goal is to spread democracy and the CFF is registered as a political organization in California. These factors are irrelevant to whether the CFF is a terrorist organization under the Immigration and Nationality Act ("INA"). In *Khan v. Holder,* No. 07-72586 (9th Cir. Sept. 9,2009), we have held that there is no exception in § 1182(a)(3)(B)(iii), for acts of armed resistance against governmental military targets even if such resistance is permitted under international law. Because the CFF acted unlawfully under Cambodian law, its actions constituted terrorist activity regardless of its democratic goals. There is also no exception in the statute for organizations registered as political entities in the United States.

The BIA's holding that Chhun failed to establish through clear and convincing evidence that he

did not know, and should not reasonably have known, that the CFF was a terrorist organization is also supported by substantial evidence. Chhun admitted that he raised money to feed CFF fighters and acknowledged the CFF's violent attempted coup to overthrow the Cambodian government. These activities constitute terrorist activity under § 1182(a)(3)(B)(iii).

Chhun argues that the BIA erred by holding that he poses a danger to the security of the United States. This argument is foreclosed by the INA. Under 8 U.S.C. § 1231(b)(3)(B)(iv), any alien who engaged in terrorist activities is one for whom there are "reasonable grounds to believe that the alien is a danger to the security of the United States." Such aliens are statutorily ineligible for withholding of removal.

Petition for review DENIED.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals
Falls Church, Virginia 22041

Files: A94 833 083 - Los Angeles
A96 339 593
A96 354 937

Date: OCT 16 2006

In re: ENG CHHUN
VENG AN ENG
CHAMROEN ENG

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Steve Paek, Esquire

ON BEHALF OF DHS: James M. Left
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)]- In the United States in violation of law (all respondents)

APPLICATION: Asylum; withholding of removal; Convention Against Torture

APPENDIX B

The respondents' appeal of the Immigration Judge's April 24, 2005, written decision denying their applications for asylum and withholding of removal under sections 208 and 241 (b)(3) of the Immigration and Nationality Act, 8U.S.C. §§ 1 158 And1231(b)(3),and request for protection under the Convention Against Torture, 8 C.F.R. §§ 1208.16-.18 (2006), is dismissed.[1]

We find no error in the Immigration Judge's conclusion that the respondent is subject to a mandatory denial of his applications for asylum, withholding of removal, and withholding of removal under the Convention Against Torture, pursuant to the terrorism bars. *See* section 208(b)(2)(A)(v) of the Act, 8 U.S.C. § 1158(b)(2)(A)(v) (providing for mandatory denial of asylum); 8 C.F.R. § 1208.16(d)(2) (providing for mandatory denial of withholding of removal and withholding under the Convention Against Torture). An alien who solicits funds or other things of value for a terrorist organization described in section212(a)(3)(B)(vi)(III) of the Act, unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, is considered to have engaged in terrorist activity.' *See* section 212(a)(3)(B)(iv)(IV)(cc), 8 U.S.C. § 1182(a)(3)(B)(iv)(IV)(cc). An alien who solicits any individual for membership in a terrorist organization described in section 212(a)(3)(B)(vi)(III) of the Act, unless the solicitor can demonstrate by clear and convincing

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[1] The lead respondent's sons have filed separate asylum applications, but their claims are substantially based on the claim of their father. All further references to the "respondent" refer solely to the lead respondent unless otherwise specified.

evidence that he did not know, and should not reasonably have known, is considered to have engaged in terrorist activity.[2] *See* section 212(a)(3)(BXiv)(V)(cc), 8 U.S.C. § 1182(a)(3)(8)(iv)(V)(cc). If the evidence indicates that the terrorism bar applies, the alien has the burden of proving by a preponderance of the evidence that the terrorism bar does not apply. *See* 8 C.F.R. § 1240.8(d);see *also Matter ofS-K-*. 23 I&N Dec. 936 (BIA 2006).

The record reflects that the respondent was a member of the Cambodian Freedom Fighters ("CFF") (Tr. at 41-45; 65-67; 86-88). We agree with the Immigration Judge's determination that while the CFF is not designated as a terrorist organization under section 219 of the Act or otherwise designated by the Secretary of State, the evidence of record supports a finding that the CFF constitutes a terrorist organization as defined in section 212(a)(3)(8)(vi)(III) of the Act, inasmuch as it is a group of two or more individuals that has committed acts that the organization knows, or reasonably should know affords material support to a terrorist organization described in section 212(a)(3)(B)(vi) of the Act (1.J. at 6-7; Exhs. 3, 5). On appeal, the respondent essentially argues that the CFF's goal of effectuating democratic principals against a totalitarian regime should act as an exception to a finding that an organization falls within the defmition of a terrorist organization. *See* Respondent's Brief at 9-12. However, as we noted in *Matter of S-K-, supra,* at 941, Congress has intentionally drafted the terrorist bars to relief very broadly so as to include "even those people

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[2] We note that the amendment to section 212(a)(3)(B)(iv)(IV)(cc) of the Act by the REAL ID Act eliminates the requirement that the solicitation further the organization's terrorist activity. *See* REAL ID Act §103(b). This amendment applies to removal proceedings instituted before, on, or after May 11,2005. *See* REAL ID Act § 103(d).

described as 'freedom fighters,' and it did not intend to give us discretion to create exceptions for members of organizations to which our Government might be sympathetic." As noted by the Immigration Judge, the evidence of record shows that the CFF engages in violent and deadly activities aimed at the overthrow of the Cambodian government, including a November 24, 2000, failed coup against the Cambodian government involving attacks against three military bases (Exhs. 2, 3, 5, 6). In light of the foregoing, we find no error in the Immigration Judge's conclusion that the CFF is a terrorist organization as defined in section 212(a)(3)(B)(vi)(III) of the Act.

Further, the respondent's argument that he did not "engage in terrorist activities"is belied by his testimony that he recruited members to join the CFF and raised money for that organization (Tr. at 4145,66-67). The respondent has failed to establish through clear and convincing evidence that he did not know or reasonably should not have known that his activities on behalf of the group, specifically, the solicitation of monies and members, would further the CFF's terrorist activities. Hence, we agree with the Immigration Judge's conclusion that the respondent is subject to mandatory denial of asylum, withholding of removal under section 24 1 (b)(3) of the Act, and withholding of removal under the Convention Against Torture.

Furthermore, we find no error in the Immigration Judge's conclusion that the respondent failed to meet his burden of proof to establish eligibility for deferral of removal under the Convention Against Torture. To establish eligibility for such relief the alien must establish that is it more likely than not that he will be tortured in

the country of removal. *See* 8 C.F.R. §§ 1208.16(c)(3), respondent testified that because his name is on a CFF membership list, he fears he will be arrested and tortured if returned to Cambodia (Tr. at 53). The respondent testified that the government authorities entered and searched his home and informed him that his name was on a membership list (Tr. at 48-50). However.despite the government's knowledge that he was a CFF member, he was never harmed or detained by the government, even after the 2000 coup attempt by the CFF. While the respondent argues on appeal that the record indicates that the Cambodian government has "initiated a crackdown on the CFF,"(Exh. 6) we agree with the Immigration Judge that there was insufficient evidence to conclude that the Cambodian government tortures CFF members, especially members like the respondent who did not have a leadership role in the 2000 coup (IJ. at 9). In addition, while the respondent claimed he would be singled out for harm because he had the same last name and was related to the founder ofthe CFF, Yasith Chhun, Mr. Chhun, testifying on behalf of the respondent, estimated that approximately 100 people have the family name Chhun in Cambodia and did not indicate that any harm ever befell any of those individuals (Tr. at 138). Accordingly, we agree with the Immigration Judge's conclusion that there is insufficient evidence to conclude that the respondent would be of interest to the Cambodian government upon his return and that it was not "more likely than not" that he would be tortured upon his return to Cambodia.

Finally, we agree with the Immigration Judge's denial of voluntary departure in discretion, and further note that the respondent is statutorily ineligible for such relief. *See* section 240B(b)(1)(C) of the Act, 8 U.S.C. § 1229c(b)(1)(C). Accordingly, the following order will be entered.

ORDER: The respondents' appeal is dismissed.

FOR THE BOARD

IMMIGRATION COURT
606 SOUTH OLIVE ST., 15TH FL
LOS ANGELES, CA 90014

Case No.: A94-833-083

In the Matter of CHHUN, ENG
Respondent

IN REMOVAL PROCEEDINGS.

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Apr 21, 2005.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.
[X] The respondent was ordered removed from the United States to or in the alternative to Kampuchea/ Cambodia.
[ ] Respondent application for voluntary departure was denied and respondent was ordered removed to
Or in the alternative to
[ ] Respondent application for voluntary departure was granted until
upon posting a bond in the amount of
with an alternate order of removal to

APPENDIX C

Respondent's application for:

[X] Asylum was ( ) granted (X) denied ( ) withdrawn

[X] Witholding of removal was ( ) granted (X) denied ( ) withdrawn

[ ] A waiver under section _____ was ( ) granted ( ) denied ( ) withdrawn

[ ] Cancellation under section 240A (a) was ( ) granted ( ) denied ( ) withdrawn

Respondent's application for:

[ ] Cancellation under section 240A (b) (1) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Cancellation under section 240A (b) (2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of status under section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[X] Respondent's application of (X) withholding of removal (X) deferral of removal under article III of the Convention Against Torture was ( ) granted (X) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under Section 246.

[ ] Respondent is admitted to the United States as A _____ until _____

[ ] As a condition of admission, respondent is to Post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum

application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration judge's oral decision.

[ ] Proceedings were terminated.

[X] Other: _____

Date: Apr 21, 2005

_____

CHRISTINE A. BITHER
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

Files: A93 833 083
A96 339 593
A96 354 937

In the Matter of:

CHHUN, Eng
Eng, VengAn
Eng, Chamroen

Respondents

IN REMOVAL PROCEEDINGS

CHARGES: Section 237(a)(I)(B) of the Immigration and Nationality Act [8 U.S.C. § 1227(a)(l)(B)] - *After admission as a nonimmigrant, remained in the United States for a time longer than permitted*

APPLICATIONS:

Section 208(a) of the Immigration and Nationality Act - *Asylum*

Section 241 (b)(3) of the Immigration and Nationality Act - *Withholding of Removal*

Article III of the Convention Against Torture - *Protection Under the Convention Against Torture*

APPENDIX D

Section 240B of the Immigration and Nationality Act
Voluntary Departure

ON BEHALF OF THE Respondent:

Steve Paek, Esq.
Law Office of Steve Paek
3435 Wilshire Blvd., #3040
Los Angeles, California 90010

ON BEHALF OF THE GOVERNMENT:

James M. Left, Esq.
United States Department of Homeland Security
606 South Olive Street, 8th Floor
Los Angeles, California 90014

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

Respondents, father and two sons, are natives and citizens of Kampuchea and Cambodia. The lead Respondent in this matter, Chhun, Eng, file number A94 833 083, who provided much of the testimony will hereinafter be referred to as Respondent. He entered the United States on January 28, 2002, with permission to remain until July 27, 2002, but he admitted remaining beyond the July 27, 2002 authorized date without permission. His twenty-three year old son, Eng, Veng An, file number A96 339 593, arrived in the United States on the same day as his father, January 28,2002, and has also remained in the United States beyond his authorized stay. Respondent's

other son, Eng, Chamroen, file number A96 354 937, who is currently 15 years old, arrived in the United States with his mother on June 3, 2003, and was given permission to remain in the United States until December 3, 2003. Like his father and his brother, however, he remained beyond his authorized period of admission without permission. Accordingly, all three Respondents are present in the United States in violation of Section 237(a)(1)(B) of the Immigration and Nationality Act.

As relief from removal or deportation Respondents have applied for asylum, withholding of removal, protection under the Convention Against Torture, and voluntary departure.

II. Statement of Facts

According to Respondent's written asylum application, he is a member ofa group called the Cambodian Freedom Fighters or CCF. His application sets forth that two of his cousins, Chetra Chhun and Ausith Chuun are also members of the group. According to Respondent, Chetra has been imprisoned since 1999, and Ausith lives in Long Beach. California

According to Respondent's testimony, he left Cambodia on January 28, 2002, because of his involvement in the CFF, an organization against the government. He testified that he became a CFF member in July 1999. He explained that in August 1998, when he was in Poipet Provence, he met the leader of the CFF movement, Chhun, Yasith, who happens to be his cousin from Long Beach, California. After meeting Chhun, Yasith in 1998, Respondent decided to join the CFF organization. Respondent explained that his father and Chhun, Yasith's mother are siblings.

Respondent testified that when he was in Cambodia, he recruited people for membership in CFF believing that it stood for freedom, justice, and democracy, unlike the ruling government of Cambodia. He testified that there were no CFF meetings because the group was secret. Instead, he said he had one on one meetings with individuals and he explained to them that the government abused human rights and that the CFF would not do SQ. He testified that he also raised money for CFF. He explained that if people liked the goals of freedom, justice, and democracy, they would contribute money to CFF and that because most people liked democracy, they joined the CFF movement and gave donations. Respondent testified that his responsibilities extended only to recruiting people and raising money for the organization which was used to help the fighters in the forest. He declared that his "duty is for

When recruiting members for the CFF, Respondent told prospective members that there would be no killing because the movement would be secret. He said that the CFF movement was a peaceful movement to topple the Cambodian government and get rid of communism, but he was unable to explain what the peaceful plan was to topple the Cambodian government. He testified that his only responsibility was to recruit people and gather donations for the fighters in the forest. He explained that the donations he collected were used to feed the guerrillas in the forest who opposed the Cambodian government. Respondent said that the CFF movement had nothing to do with taking the lives of others.

In November 2000, the CFF took up arms against the Cambodian government. According the Respondent, after the coup failed, CFF members had a lot of problems including being arrested. Respondent stated that not only

were leaders arrested, but recruiters were arrested as well and put in prison. Respondent testified that the government, if suspicious of someone, would follow people that they believed were CFF members and put them in prison.

Respondent said that he thought he was being followed and he thought he might be arrested after the coup attempt because the authorities began to round up all CFF members after the failed coup. On cross-examination, Respondent testified that he did not believe it was necessary for him to hide from the authorities, however, because he was just a suspect. After the failed coup, Respondent believes that the CFF membership list fell into the hands of the government. He explained that government officials found a membership list in F ebruary 2001, in the computer of a Mr. Richard Kiri, a leader of the CFF who was arrested after the coup in November 2000. Respondent testified that he was told his name was on the membership list when some security officials came to his house.

According to Respondent, on December 8, 2001, more than a year after the failure of the coup in November 2000, five people or security agents who were members of the Department of Security came to Respondent's house to search for documents. At the time, only Respondent and his wife were at home. The security officers told Respondent that he was suspected of being a member of CFF, but Respondent denied it. They searched his house looking for documents, but they did not find anything and they just left.

Respondent said he felt like he was a suspect so he went to Battambang Provence about 30 km away from his home. He said he stayed with his in-laws until he left for

the United States in January 2002. He thought that some security officers might still came to his home, but he was not able to explain why he thought they might still be coming to his home.

On October 17,2001, Respondent was issued a passport He testified that it was issued because communism is corrupt and if anyone has enough money, they will be able to get a passport. He said that he paid $250 US dollars for his passport, about 5 months averages earnings. Thereafter, on January 9, 2002, he obtained a US visa.

Respondent testified that from November 2000, the time of the attempted coup, he never left Cambodia until he came to the United States in January 2002, but his passport demonstrated otherwise. His passport reflects that on two occasions, he went to Vietnam and both times he was inspected by Cambodia officials On cross-examination, he testified that on both of his trips to Vietnam, he was required to be inspected by customs while traveling in a taxi and that he had no problems with any customs officials.

Respondent explained that he went to Vietnam for heart problems but that he did not stay in Vietnam because both it is a communist country. He stated that while in Vietnam, he stayed with a friend, Sieu Vu Tieng.

Respondent testified that he fears returning to Cambodia because he may be arrested, detained, and tortured because his name is on the list of CFF members. He believes that although his sons were not CFF members, they would have problems as well. He explained that he believes his sons might have problems because if the Cambodia authorities cannot catch and

detain him, under the communist system, they will detain his sons.

In support of his application, Respondent's cousin Chhun, Yasith, who lives in Long Beach, California testified. He is the leader of the CFF movement and explained how the group was formed and detailed the CFF goals. He explained that CFF membership lists are kept in his computer. He outlined the requirements for membership, stating that members love democracy and are against dictatorship and that members must adhere to the organizational goal of standing up and fighting against dictatorships even if that means sacrificing life. He said he first met Respondent in 1998, when he attended a convention on the 23rd of March 1998, in Thailand. At that time, he talked to Respondent and Respondent volunteered to become a recruiter for the CCF group.

In particular, he testified that he organized an armed rebellion, titled operation Volcano, in November 2000, in an attempt to overthrow the Cambodian government. He planned the rebellion by setting two hundred and ninety-one targets to be arrested by 1,500 armed CFF members. He stated that after the uprising failed, as many as four to five hundred CFF members were arrested and fifty of the top commanders were detained. In addition, both CFF members as well as government officials were killed during the uprising.

Mr. Chhun also stated that he believes that if Respondent is required to return to Cambodia, Respondent will be detained because they have the same last name, Chhun, and the current dictator knows that Respondent is his cousin and, therefore, the dictator fears Respondent.

III. Standards of Law and Analysis

A. Credibility

The Court must make a threshold determination of Respondent's credibility before considering whether he meets any of the statutory criteria for asylum, withholding of removal, or relief under the Convention Against Torture. Matter of O-D-, 21 I. & N. Dec. 1079, 1080-81 (BIA 1998). In this matter, Respondent did confuse several dates, but none of them appear to go to the heart of his asylum claim. Accordingly, Respondent's testimony is determined to be generally credible.

B. Asylum

Applicants for asylum must demonstrate by clear and convincing evidence that the application was filed within one year after the date of his arrival unless there are extraordinary circumstances or changed circumstances. INA § 208(a)(2)(B) (2004). In this matter, Respondent's application for asylum was timely filed.

An applicant is statutorily barred from asylum, however, if the Attorney General determines that the applicant has engaged in or is likely to engage in terrorist activity at any time as defined by section 212(a)(3)(B)(i)(I), (II), (III), (IV) or (V), or section 237(a)(4)(B) of the Act *or* if the Attorney General determines that there are reasonable grounds for regarding the alien as a danger to the security of the United States. See INA §§ 208(b)(2)(A)(iv) and (v); Bellout v. Ashcroft, 363 F.3d 975,978 (9th Cir. 2004).[1] To be statutorily barred from a grant of asylum, it is not necessary that the applicant be convicted of a terrorist act; rather, it suffices that the Attorney General knows, or

has reasonable grounds to believe that the individual "has engaged," "is engaged," or "is likely to engage" in terrorist activity. INA § 212(a)(3)(B)(i)(I)-(II).

Engaged in terrorist activity includes soliciting funds for terrorist activities as well as soliciting individuals to engage in terrorist activities. INA § 212(a)(3)(B)(iv). Among the terrorist activities enumerated in the statute are threats, attempts, or conspiracies to use explosives with intent to endanger, directly or indirectly, the safety of one or more individuals, an assassination or causing substantial property damage. INA § 212(a)(3)(B)(iii)(IV)-(VI). If the evidence indicates that one or more of the grounds for mandatory denial of the application for asylum may apply, the alien has the burden of proving by a preponderance of the evidence that such grounds do not apply. 8 C.F.R. § 1240.8(d); Matter of R-S-H-, 23 I. & N. Dec. 629,640 (BIA 2003).

In the present case, Respondent's asylum application will be denied pursuant to INA § 208(b)(2)(A)(v). Under this provision, an asylum application will be denied the applicant is "inadmissible under subclause (I), (II), (III), (IV), or (V) of section 212(a)(3)(B)(i)." Pursuant to INA § 212(a)(3)(B)(i)(I), any alien who engaged in a terrorist activity is inadmissible, and the INA defines engaging in terrorist activity

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[1] See BeBout v. Ashcroft, 363 F.3d 975,978 (9th Cir. 2004) (*clarifying* that the holding in Cheema v INS, 350 FJd 1035 (9th Cir. 2003) applied to a previous version of the INA)(an alien is statutorily ineligible for asylum if the Attorney General decides that there are reasonable grounds for regarding the alien as a danger to the security of the U.S. *or* that the alien is inadmissible or removable for terrorist activity).

To include soliciting any individual for membership in a terrorist organization described in INA § 212(a)(3)(b)(vi)(I) or (vi)(II) or for membership in a terrorist organization described in clause INA § 212(a)(3)(b)(vi)(III), unless the solicitor can demonstrate that he did not know, and should not reasonably have known, that the solicitation would further the organization's terrorist activity.

Based on the testimony and evidence presented, the Court finds Respondent to be an alien who is inadmissible for having engaged in a terrorist activity and, thus, ineligible for asylum.

Respondent testified that he is a member of the CFF, an organization who aims to overthrow the established government of Cambodia! Kampuchea by use of force and violence. The United States Department of State has not designated the CFF as a Foreign Terrorist Organization in accordance with section 2 19 of the Act. Instead, the United States Department of State's annual report on *"Patterns a/Global Terrorism - 2003"* lists the Cambodian Freedom Fighters as a terrorist organization.[2] See United States v. Afshari, 392 F.3d 1031, 1040 (9th Cir.

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2 According to the United States Department of State, Office of the Coordinator for Counterterrorism, *"Patterns of Global Terrorism."* "The Cambodian Freedom Fighters (CFF) emerged in November 1998 in the wake of political violence that saw many influential Cambodian leaders flee and the Cambodian People's Party assume power. With an avowed aim of overthrowing the Government, the US based group is led by a Cambodian-American, a former member of the opposition Sam Rainsy Party. The CFF"s membership reportedly includes Cambodian- Americans based in Thailand and the United States and former soldiers from the Khmer Rouge, Royal Cambodian Armed Forces, and various political factions." Ex. 3.

2004)(noting that "The sometimes subtle analysis ofa foreign organization's political program to determine whether it is indeed a terrorist threat is peculiarly withinthe expertise of the State Department and the Executive Branch."). The *Patterns of Global Terrorism* report also describes terrorist activities in which the CFF has engaged, including two terrorist plots and a fatal attack in November 2000, that killed at least eight people and wounded more than a dozen.[3] Thus, certain activities including solicitation of funds and solicitation for membership in the CFF terrorist organization, bar an applicant from a grant of asylum.

As a CFF member, Respondent has knowledge that he is part of a "rebel group plotting to overthrow the Cambodian government." See ex 2, Sunday Press Telegram article dated June 17, 2001, titled "Revolution from a Long Distance." According to the article, "the Cambodian Freedom Fighters, [is] an anti-communist group that launched a deadly, but unsuccessful attack on three military bases in Phnom Penh" in November of

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3 The United States Department of State has submitted this report in compliance with Title 22 of the United States Code, Section 2656f(a), which requires the Department of State to provide Congress a full and complete annual report on terrorism for those countries and groups meeting the criteria of Section (a)(I) and (2) of the Act. As required by legislation, the report includes detailed assessments of foreign countries where significant terrorist acts occurred and countries about which Congress was notified during the preceding five years pursuant to Section 6(j) of the Export Administration Act of 1979 (the so-called terrorist-list countries that have repeatedly provided state support for international terrorism). United States Department of State, Office of the Coordinator for Counterterrorism, "Patterns of Global Terrorism," available at http://www.state.gov/s/ctlrls/pgtrptl2003/31880.htm (released April 29, 2004).

2000. The article further provides that the group is lead by Yasith Chhun who lives in Long Beach, California. TheCambodian government tried and convicted Chhun *in absentia* for terrorism. Id.

According to additional evidence provided by Respondent, thirty-two suspects were tried, two *in absentia,* for the November 2000 attack "which left eight people dead and 14 injured." See Internet printout called Judiciary on Trial, dated June 19,2001. Respondent's exhibits further set forth that during the attack, "an estimated 50-strong force of alleged anti-government insurgents attacked two city locations using B-40 rockets, grenades and AK-47's." See article titled "Armed Rebels Make Deadly *Night* Raid on Phnom Penh"

The violence has not ceased. According to *Department of State 2003 Country Report for Cambodia:*

During the year, there were several high-profile killings by unknown actors. For example, on April 22, Judge Sok Setharnony of the Phnom Penh Municipal Court was shot and killed in his car on his way to work. Perpetrators on a motorbike fired five shots at the judge while he was stopped at a traffic light. Judge Sethamony had presided over the 2002 trials of the Cambodian Freedom Fighters (CFF) and was scheduled to preside over the trial of those accused of participating in the January anti-Thairiots .... There was much speculation on the motive for his assassination. Military police subsequently arrested three suspects who police claimed had links to the CFF. The suspects were in prison awaiting trial at year's end.

Respondent set forth in his written asylum application that since registering with the CFF on July

15, 1999, he was "an active [CCF] member who performed a job as a civil recruiter in Phnom Penh Zone." In his testimony, Respondent affirmed that he recruited members to join CFF and that he raised money for the organization. According to his written asylum application, Respondent still actively participates in the CFF by attending the organization's weekly meeting at "central command head quarter in Long Beach, [California]." In addition, "the US-based leadership collects funds from the Cambodian-American community" to support their terrorist activities. See Ex. 3, United States Department of State, Office of the Coordinator for Counterterrorism, *"Patterns of Global Terrorism. "*

Thus, Respondent has engaged in a terrorist activity by soliciting individuals for membership in a terrorist organization, namely, the CFF, and by raising funds for the group. The evidence reveals that Respondent was fully aware that his involvement with the group, specifically, his solicitation activities, would further the CFF's terrorist activities. Respondent testified that it was his responsibility was to recruit people and gather donations for the fighters in the forest. He explained that the donations he collected were used to feed the guerrillas in the forest who opposed the Cambodian government. Thus, it's clear that Respondent had knowledge that guerrillas were being trained in the forest to overthrow the government and that he was aware that the CFF has engaged in and advocates that use of violent terrorist activities to further its goals. Accordingly, because Respondent has engaged in a terrorist activity, there are grounds for mandatory denial of his asylum application. Furthermore, Respondent has not met his burden of proving by a preponderance of the evidence that such grounds do not apply. See 8 C.F.R. § 1240.8(d). Thus, Respondent's application for asylum is denied.

Even if Respondent were statutorily eligible for asylum) the Court would deny his claim for such relief as a matter of discretion. See *Kalubi* v. Ashcroft, 364 F.3d 1134, 1139 (9th Cir. 2004)(membership in a terrorist organization is relevant to discretionary relief). Respondent is a self-proclaimed "active member" of an organization that engages in violent and deadly activities aimed at the overthrow of the Cambodian government. As stated above, the CFF's terrorist activities have already resulted in the deaths of at least eight people and injuries to more than a dozen others. Respondent aided this organization as a fund raiser and CFF recruiter in Cambodia and as an active participant and supporter in the organization's affairs at its headquarters in the United States. Respondent actively participates in the CFF's activities with the knowledge that the group has brought about the deaths significant numbers of people and that the group advocates the use of violence to achieve its goals. In fact, Respondent testified that the money he raised for the CFF in Cambodia was used to support "fighters" or "guerrillas" in Cambodian forests. The Court concludes that because of his involvement in a terrorist organization advocating violent overthrow of the Cambodian government, Respondent does not merit a discretionary grant of asylum.

C. Withholding of Removal

Respondent also has requested relief in the form of withholding of removal under section 241(b)(3) of the Act. Unlike asylum, withholding of removal is not discretionary. Al-Harbi v. INS, 242 F.3d 882, 888 (9th Cir. 2001). An alien cannot be deported to a country where his "life or freedom would be threatened" on account of a protected ground. Isi. To be eligible for withholding of removal, Respondent's evidence must show a "clear

probability" of persecution in the country designated for removal on account of one of the five enumerated grounds. INS v. Stevie, 467 U.S. 407, 413 (1984); Ladha, 215 F.3d 889, 897 (9th Cir. 2000). The "well-founded fear" standard for asylum is more generous than the standard for withholding of removal under section 241 (b)(3) of the INA. INS v. Cardoza-Fonseca, 480 U.S. 421, 431 (1987).

A court may not grant withholding of removal to an alien, however, if the Attorney General determines that there are reasonable grounds to believe that the alien is a danger to the security of the U.S. INA § 241(b)(3)(B)(iv). Bellout, 363 F.3d at 979. An alien described in INA § 237(a)(4)(B), *i.e.*, an individual who engages in terrorist activity, shall be considered as an alien for whom there are reasonable grounds to believe that he poses a danger to the security of the United States. Id.; INA § 241(b)(3)(B)(iv). Such alien's application for withholding of removal under INA § 241 (b)(3) shall be denied, with the exception of certain applications adjudicated in proceedings commenced before April 1, 1997, and not relevant in these proceedings. See 8 C.F.R. § 1208.16(d)(2)-(3). If the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the alien shall have the burden of proving by a preponderance of the evidence that such grounds do not apply which Respondent has failed to do. 8 C.F.R. § 1240.8(d); Matter ofR-S-H, 23 I. & N. Dec. at 640. Thus, Respondent's application for withholding of removal under INA § 241(b)(3) is denied.

D. Protection under Article III of the Convention Against Torture

As with withholding of removal under section 241(b)(3)(B)(iv) of the Act, a court may not grant

withholding of removal under the Convention Against Torture to an alien if the Attorney General decides that there are reasonable grounds to believe that the alien is a danger to the security of the U.S. Bellout, 363 F.3d at 979; see also INA § 241(b)(3){B)(iv); 8 C.F.R. § 1208.16(d)(2). If, however, an alien has been ordered removed pursuant to the provisions for mandatory denial of withholding of removal under 8 C.F.R. § 1208.16(d)(2) or (d)(3), and if he has been found under 8 C.F.R. § 1208. 16(c)(3) to be entitled to protection under the Convention Against Torture, then he shall be granted deferral of removal to the country where he is more likely than not to be tortured. Bellout, 363 F.3d at 979; see also 8 C.F.R. § 1208.17(a). In order to qualify for deferral of removal under 8 C.F.R. § 1208.17(a), the alien must establish that it is more likely than not that he will be tortured if he returns to the country of removal. Id.

In the present case, the Court finds that Respondent has failed to establish that he is more likely than not to be tortured ifhe returns to Cambodia. Respondent claims that he will be tortured because the Cambodian government is aware that he is related to Yasith Chhun, founder of the CFF. He stated that he believes that the Cambodian government will detain and torture him on account of his relationship to Yasith Chhun and his membership in the CFF. Respondent's witness, Mr. Yasith Chhun, also testified that he believes that if Respondent returns to Cambodia, Respondent will be detained. He explained that because he and Respondent have the same last name, Chhun, and the current dictator knows that Respondent is his cousin, the dictator fears Respondent and will detain him. Mr. Yasith Chhun testified that as a result of having the same last name, as well as being related to the leader of the CFF. that he believes that Respondent could be harmed by the

Cambodian government. Respondent's concerns, however, are not supported by the record.

The Cambodian government did not detain or harm Respondent in any manner after the 2000 uprising by the CFF when they had ample opportunity to do so if they had any interest whatsoever in Respondent's activities. According to Respondent's testimony, government authorities entered his home and informed him that his name was on a CFF membership list. In fact, they searched his home in November 2000, but the authorities did not threaten or harm Respondent in any manner. Respondent further testified that if the Cambodian government were suspicious of someone being a CFF member, they would follow that individual and put them in prison. Yet, Respondent was never harmed or detained in spite of the fact that the government had knowledge of the fact that he was a CFF member. Thus, it appears that the Cambodian government has no interest in detaining Respondent for his actions as a CFF member much less torturing him.

Additionally, nothing in the record substantiates Respondent's fears that the Cambodian government would torture any members of the CFF, especially members like Respondent who did not have leadership roles in the November 2000 attempted coup. Respondent's witness, Chhun, Yasith, leader of the CFF affirmed that only about fifty top leaders of the CFF were detained after the failed coup. He also speculated that Respondent could be harmed because he and Respondent are related and have the same last name. He estimated, however, that about one hundred people have the same last name and failed to point to anyone with the name Chhun that had been harmed. Accordingly, Respondent's contentions do not establish that it is "more likely than not" that he will

be tortured if returned to Cambodia. See Kamalthas v. INS, 251 F.3d 1279, 1282-83 (9th Cir. 2001).

Moreover, the Cambodian government issued Respondent a passport and allowed him, as well as his wife and children, to travel outside the country to the United States. There is no reason to believe that the Cambodian government would torture Respondent or any member of his family nor is there any reason to believe that the they would be tortured by any other individual by or with the acquiescence of the Cambodian government. Therefore, Respondent's claim for relief under Article III of the Convention Against Torture is denied.

E. Voluntary Departure

Respondent has applied for the relief of voluntary departure. As a matter of discretion, Respondent's application will be denied. By engaging in terrorist activity as a member of the CFF, an organization "with an avowed aim of overthrowing the Government," by violent means, Respondent has acted outside the bounds of internationally accepted norms. See Kalubi, 364 F.3d at 1139. As such this court will not grant Respondent the privilege of voluntarily departing the United States.

F. Respondent Eng, Veng An, A96 339 593

Respondent's twenty-four year old son, son Eng, Veng An testified briefly during the hearing in support of his own application for asylum. His testimony revealed that he is an active member of the same terrorist organization to which his father belongs, the CFF. While he did not actively participate in the groups activities in Cambodia, he is a participating member of the organization in the United States. Because he is a

member of a Department of State designated terrorist group, he is ineligible for asylum and withholding.

While Respondent's witness, Chhun, Yasith, leader of the CFF, testified that the CFF does not have a goal of overthrowing the Cambodian government by violent means, he also testified that the group has a goal of standing up and fighting against the Cambodian government. As the Department of State has noted, the CFF has "an avowed aim of overthrowing the government." See Ex. 3, *"Patterns of Global Terrorism" at p.* 4. Chhun, Yasith also admitted that CFF members are just waiting for him to issue instructions on how they should overthrow the government because he believes that the Cambodian cannot be changed by diplomatic means. As such, for the reasons set forth *supra*, he is similarly barred from asylum and withholding of removal. In addition, his application for asylum is denied as a matter of discretion for his participation in a terrorist group that advocates violent overthrow of the Cambodian government. Id.

Likewise, for reasons stated *supra*, his application for protection under the Convention Against Torture is denied. He has not met his burden of establishing that members of the CFF who did not have a leadership role in the November 2000 attempted coup are tortured by the Cambodian government nor has be established that the Cambodian government would have any interest in torturing him or acquiescing in his torture.

Finally, his application for voluntary departure will be denied as a matter of discretion. Id. He testified that he did not participate in CFF activities in Cambodia. Instead, he said he decided to attend CFF meetings after he arrived in the US. Thus, it appears that even

after he learned of the failed bloody coup and the terrorist activities of the group. he decided to join anyway and support their activities. Thus, as a member of an organization that supports terrorist activities, his application for voluntary departure will be denied as a matter of discretion. Id.

ORDER

IT IS ORDERED that Respondents' applications for Asylum pursuant to section 208 of the Act be DENIED.

IT IS ORDERED that Respondents' applications for Withholding of Removal pursuant to section 241 (b)(3) of the Act be DENIED.

IT IS ORDERED that Respondents' applications for Withholding and Deferral of Removal pursuant to Article III of the Convention Against Torture be DENIED.

IT IS FURTHER ORDERED that Respondents be REMOVED TO CAMBODIA.

Christine A. Bither
United States Immigration Judge